

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
FILED  
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2004 JUN -2 A 11:33

RECEIPT # 56288  
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LOCAL RULE 4.1 \_\_\_\_\_  
WAIVER FORM \_\_\_\_\_  
MCF ISSUED \_\_\_\_\_  
BY DPTY. CLK. ms  
DATE 6-2-04

JOSEPH PASIONEK,  
Plaintiff,

U.S. DISTRICT COURT  
DISTRICT OF MASS.

v.

NATIONAL RAILROAD PASSENGER  
CORPORATION, a/k/a AMTRAK,  
Defendant.

CIVIL ACTION NO.

**04** CV **11172** RWZ

**COMPLAINT AND JURY DEMAND**

**MAGISTRATE JUDGE** Alexander

1. The Plaintiff, Joseph Pacionek, is an adult individual residing at 16 Old Populatic Road, Norfolk, Massachusetts 02056.
2. The Defendant, National Railroad Passenger Corporation, a/k/a Amtrak ("Amtrak") is a railroad corporation organized and existing under the laws of the District of Columbia, doing business at and whose address for service of process is 253 Summer Street, Boston, MA 02210.
3. This suit is brought pursuant to an Act of Congress known as the Federal Employers' Liability Act, 45 U.S.C. §§ 51-60.
4. At all times hereto, the Defendant, National Railroad Passenger Corporation a/k/a Amtrak was a common carrier, engaged in the business of interstate commerce and, as such, operated a railroad in such business between Boston Massachusetts and Washington D.C.
5. At the time and place hereinafter mentioned, the acts of omission and commission causing injuries to the Plaintiff was done by the Defendant, Its agents, servants, workmen and/or employees acting in the course and scope of their employment with and under the

direct and exclusive control of the Defendant.

6. At the time and place hereinafter mentioned, the Plaintiff was employed by Defendant railroad and was acting in the scope of his employment by Defendant and was engaged in the furtherance of interstate commerce within the meaning of the F.E.L.A.

**COUNT I**  
**OCCUPATIONAL LUNG DISEASE**

7. Plaintiff incorporates by reference paragraphs 1 through 6 herein as if set forth fully at length.
8. The injuries and disability of Plaintiff while working as an employee of the Defendant were caused by his exposure to toxic and/or pathogenic chemicals, fumes, vapors, mists, or gases, including but not limited to sulfuric acid and caustic soda liquid.
9. All property, equipment and operations involved in this occurrence hereinafter referred to were owned and/or under the direct and exclusive control of the Defendant, its agents, servants, workmen and/or employees.
10. Plaintiff's exposure(s) occurred on or about June 17, 2001 and continued through and including the present, primarily while Plaintiff was working as a sheet metal worker for the Defendant in Boston, Massachusetts.
11. Plaintiff's illness was diagnosed as occupational asthma.
12. Plaintiff discovered that he had sustained occupational asthma from exposure to toxic and/or pathogenic chemicals, fumes, vapors, mists, or gases, including but not limited to sulfuric acid and caustic soda liquid.
13. Plaintiff's occupational asthma was caused by and/or contributed to in whole or in part by the negligence, carelessness and/or recklessness of the Defendant, generally and more

specifically as follows:

- a. In failing to exercise reasonable care to adequately warn Plaintiff of the risks, dangers and harm to which he was exposed in working with, touching or inhaling toxic and/or pathogenic chemicals, fumes, vapors, mists, or gases, including but not limited to sulfuric acid and caustic soda liquid.
- b. In failing to provide the Plaintiff with reasonably safe and sufficient personal safety apparel and equipment including but not limited to respirators as was necessary to protect him from being injured, poisoned, disabled, killed or otherwise harmed, by work with, using, handling and/ or coming in contact with and being exposed to toxic and/or pathogenic chemicals, fumes, vapors, mists, or gases, including but not limited to sulfuric acid and caustic soda liquid..
- c. In failing to provide Plaintiff with a reasonably safe place in which to work.
- d. In failing to minimize or eliminate Plaintiff's exposure to toxic and/or pathogenic chemicals, fumes, vapors, mists, or gases, including but not limited to sulfuric acid and caustic soda liquid, by providing ventilating and exhaust fans, or other recommended and available procedures.
- e. In failing to conduct any tests to determine the presence and or amount of toxic and/or pathogenic chemicals, fumes, vapors, mists, or gases, including but not limited to sulfuric acid and caustic soda liquid, in and around the Plaintiff's workplace.
- f. In failing to transfer Plaintiff from workplaces where he had been exposed to toxic and/or pathogenic chemicals, fumes, vapors, mists, or gases, including but not limited to sulfuric acid and caustic soda liquid, to other employment with no

such or lesser exposure.

- g. In failing to conduct physical examinations of Plaintiff of such quality as to detect any effects of toxic and/or pathogenic chemicals, fumes, vapors, mists, or gases, including but not limited to sulfuric acid and caustic soda liquid, so that its employees, such as Plaintiff, could be advised as to the dangers of such exposure so Plaintiff could take appropriate safety measures.
  - h. In failing to issue and enforce appropriate safety rules limiting or eliminating exposure to toxic and/or pathogenic chemicals, fumes, vapors, mists, or gases, including but not limited to sulfuric acid and caustic soda liquid.
  - i. In failing to obey appropriate and applicable federal and state regulations and industrial hygiene recommendations intended to protect Plaintiff from exposure to toxic and/or pathogenic chemicals, fumes, vapors, mists, or gases, including but not limited to sulfuric acid and caustic soda liquid.
  - j. In causing spills of chemicals, including but not limited to sulfuric acid and caustic soda liquid, in Defendant's Waste Water Treatment Plant in Boston, MA, failing to clean up said spills and causing Plaintiff's exposure to said spills.
23. As a direct and proximate result, in whole or in part of one or more of the foregoing negligent or unlawful acts on the part of the Defendants, Plaintiff suffered exposure to toxic and/or pathogenic chemicals, fumes, vapors, mists, or gases, including but not limited to sulfuric acid and caustic soda liquid, which caused him to sustain a severe injury to his body and respiratory system.
24. As a result, Plaintiff has suffered pain, nervousness and mental anguish and has been obliged to spend various sums of money to treat his disease and injuries, sustained a loss

of earnings and earning capacity, and his enjoyment of life has been greatly impaired.

WHEREFORE, Plaintiff demands judgment against the Defendant in an amount in excess of FOUR HUNDRED AND FIFTY THOUSAND (\$450,000.00) DOLLARS together with costs and interest.

**PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES RAISED IN HIS COMPLAINT.**

Respectfully Submitted,  
JOSEPH PASIONEK,  
By his attorney,



Michael J. McDevitt (BBO#: 564720)  
Lawson & Weitzen, LLP  
88 Black Falcon Avenue, Suite 345  
Boston, MA 02210  
(617) 439-4990

Dated:

6/2/04

JS 44 (Rev. 3/99)

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Joseph Pasioneck

**DEFENDANTS**National Railroad Passenger Corporation  
a/k/a Amtrak(b) County of Residence of First Listed Plaintiff Norfolk

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed

Suffolk

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Michael J. McDevitt  
Lawson & Weitzen, LLP, 88 Black Falcon Avenue,  
Suite 345, Boston, MA 02210

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 DEF Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4 DEF
- Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6 DEF

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input checked="" type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405 (g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405 (g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Tort for negligence under the Federal Employers' Liability Act, 45 U.S.C.A., section 51, et seq.

**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

- FILED  
IN CLERKS OFFICE  
2004 JUN -2 A 11:33
1. Title of case (name of first party on each side only) Joseph Pasione v. National Railroad Passenger Corporation a/k/a Amtrak
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT. **U.S. DISTRICT COURT DISTRICT OF MASS**
- ☐ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. **Also complete AO 120 or AO 121 for patent, trademark or copyright cases**
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
- None
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
- YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
- YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
- YES ☐ NO ☒
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
- YES ☒ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
- Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
- YES ☐ NO ☐
- (PLEASE TYPE OR PRINT)
- ATTORNEY'S NAME Michael J. McDevitt
- ADDRESS Lawson & Weitzen, LLP, 88 Black Falcon Avenue, Suite 345, Boston, MA 02210
- TELEPHONE NO. (617) 439-4990